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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Annual Assessment of the	)	CS Docket No. 98-102
Status of Competition in	)	
Markets for the Delivery of	)	
Video Programming	)	

REPLY COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom") hereby submits its reply comments in response to comments filed in connection with the Notice of Inquiry ("NOI") in the above-captioned proceeding. In so doing, Viacom limits its discussion to the comments of Ameritech New Media, Inc. ("Ameritech") and The Wireless Communications Association International, Inc. ("WCA"), both of which cite Viacom's satellite-delivered program services in urging expansion of the program access rules -- expressly predicated on the perceived incentives of cable-owned programmers to discriminate in favor of cable -- so as to cover non-vertically integrated satellite-delivered programming suppliers like Viacom.

Introduction

Viacom owns and operates several basic and premium satellite-delivered networks.[1] These program services are distributed by multichannel video programming distributors ("MVPDs") using both wired and wireless technologies, including cable television systems, direct broadcast satellite ("DBS") service providers, wireless cable ("MMDS") operators, satellite master antenna television ("SMATV") systems, open video system ("OVS") operators and home satellite dish ("TVRO") distributors.

Viacom divested its cable systems in July 1996. Thus, Viacom is a non-vertically integrated programming vendor under the program access rules in that it holds no ownership interest in any cable system and no cable operator holds any interest in Viacom.

The Record In This Proceeding Demonstrates that Expanding the Program Access Rules to Independent Programmers Like Viacom Is Unjustified and Unwarranted

In the NOI in this proceeding, the Commission invited commenters to submit "information and analysis" with respect to competition in markets for the delivery of video programming and requested "fact-based" projections for the future development of competition in these markets.[2] Notwithstanding this request, the comments of Ameritech and WCA are devoid of information, analysis or fact in citing Viacom's program services as a justification for expanding the program access rules to cover non-vertically

[1] Viacom, through affiliates, owns and operates: the premium program services Showtime, The Movie Channel and FLIX; the basic program services Nickelodeon (comprising the Nickelodeon and Nick at Nite programming blocks), MTV: Music Television, VH1/Music First, TV Land and M2: Music Television. Additionally, on August 1, 1998, Viacom launched a package of digital program services. Viacom, through affiliates, also holds partnership interests in Sundance Channel, Comedy Central and Noggin (which is expected to be launched in January 1999).

[2] <u>NOI in Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming</u> in CS Docket No. 98-102 at ¶ 2 (released June 26, 1998)(Emphasis added).

integrated programming suppliers. Specifically, Ameritech states that Viacom's MTV and Nickelodeon networks "at least theoretically" could, at some undefined point in the future, become subject to exclusive contracts, "with far more serious anticompetitive consequences."[3] And WCA once again suggests. in a purely conclusory manner, without offering any support for this assertion, that Viacom's status as a "former cable operator"[4] provides economic incentives for Viacom to discriminate against non-cable MVPDs.

It is groundless and, as Ameritech itself concedes, "theoretical" to assert that Viacom would offer MTV or Nickelodeon on an exclusive basis. As a non-vertically integrated programmer, Viacom profits from robust competition among MVPDs, which creates more distributors for the delivery of its program services. Indeed, although Viacom has not been covered by the program access rules since it divested its cable systems more than two years ago, it has continued to sell all of its established, mature program services, including Nickelodeon, MTV. VH1, Showtime and The Movie Channel to all distribution technologies, and Viacom intends to continue to do so. In fact, Ameritech itself carries these Viacom services under negotiated agreements.

And as to WCA's comment regarding Viacom, it defies economic theory to suggest that a former owner of cable systems is financially motivated to favor the current owner of other cable systems simply by virtue of their once-shared status as cable operators. Rather than lament Viacom's "former cable operator" nature, WCA should applaud Viacom for decoupling its cable systems from its program services, thereby eliminating all potential vertical incentives for discriminating against competing MVPDs.

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[3] Comments of Ameritech at 22.

[4] Comments of WCA at 7-8, n.14. WCA made this same baseless assertion in connection with the Commission's recently concluded proceeding in Implementation of the Cable Consumer Protection and Competition Act of 1992 in CS Docket No. 97-248, 12 FCC Rcd 22840 (1997) ("Program Access"), Comments of WCA at 5-6.

In light of the above, Viacom urges the Commission to dismiss Ameritech's and WCA's hypotheses about Viacom's possible behavior (as opposed to its actual conduct) and the need to expand the coverage of program access rules as lacking the evidentiary support requested in the NOI for providing "fact-based" projections for the future development of competition in the video programming marketplace. To the contrary, as discussed below, Viacom submits that the limits of the current program access regime actually foster viewpoint and ownership diversity and independence in the video programming marketplace. As the Commission has recently determined, there is not "sufficient evidence of a problem" to warrant further inquiry into extending the program access rules to non-vertically integrated programmers.[5]

Extending Program Access Rules to Non-Vertically Integrated Programmers Will Impair Diversity and Independence In Satellite-Delivered Programming Services

As Viacom has explained in past Commission proceedings,[6] to grant Ameritech's and WCA's requests to extend the program access rules to non-vertically integrated programmers could have the unintended effect of impeding diversity and independence in the video programming marketplace. That is because independent, non-vertically integrated programmers, like Viacom, would be precluded from implementing exclusivity even on a limited basis for its start-up services. In the current channel-locked world of cable systems, a limited grant of exclusivity is designed -- to the extent possible -- to level the playing field between independent programmers and affiliated programmers,

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[5] Notice of Proposed Rule Making in Program Access at ¶ 36.

[6] See Reply Comments of Viacom in Program Access, Reply Comments of Viacom in Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming in CS Docket No. 97-141, 13 FCC Rcd 1024 (1998)("Fourth Annual Report").

allowing independent programmers to offer a unique incentive in exchange for the carriage, promotion and marketing of their new program services.

Without being able to use this incentive to garner sufficient distribution, few independent programmers would undertake the risks inherent in the costly launch of a new national program service, which the Commission itself acknowledges to be between $100 and $125 million or more, with the inevitability of operating at a loss for a number of years.[7] Consequently, new networks would be launched primarily by vertically integrated programmers, at the expense of greater diversity and independence of viewpoint and ownership.

Viacom has used exclusivity, but on only a limited basis[8] and for only a very limited time, essentially in order to gain distribution and recognition of its start-up network TV Land, which launched in 1996. Because of this short-term mutually beneficial arrangement with some cable operators, who launched the service in exchange for exclusivity rights, TV Land is fast becoming a viable network. Indeed, Viacom eagerly awaits the day when TV Land, like its mature sister networks, MTV, Nickelodeon and others, will enjoy a solid base of subscribers so that it, too, will be licensed for carriage by all distribution technologies.

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[7] See Fourth Annual Report at ¶ 165.

[8] For example, Viacom makes all of its program services available via DBS.

Conclusion

Accordingly, Ameritech and WCA have failed to provide the Commission with the "information," "analysis" and "facts" needed to support expanding the program access rules so as to cover non-vertically integrated programmers like Viacom. Instead, the proposals to expand the program access rules would undermine diversity and independence in the video programming marketplace. For the foregoing reasons, therefore, Viacom respectfully requests that the Commission reject these calls for expansion of the existing program access rules.

Respectfully submitted,

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August 31, 1998

CERTIFICATE OF SERVICE

I, Jennifer R. Markley, hereby certify that on this 31st day of August 1998, I caused copies of the foregoing Reply Comments of Viacom Inc. to be mailed via first-class postage prepaid mail to the following:

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This 31st day of August, 1998.

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